

*United States Court of Appeals
for the Second Circuit*



**SUPPLEMENTAL
APPENDIX**

ORIGINAL

74-9343

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

GER-Ro-MAR, INC., a corporation, d/b/a SYMBRA'ETTE, and
CARL G. SIMONSEN, individually and as President of
GER-Ro-MAR, INC.,

Petitioners,

—against—

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE
FEDERAL TRADE COMMISSION

**SUPPLEMENTAL
JOINT APPENDIX**

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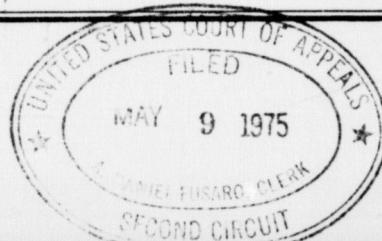
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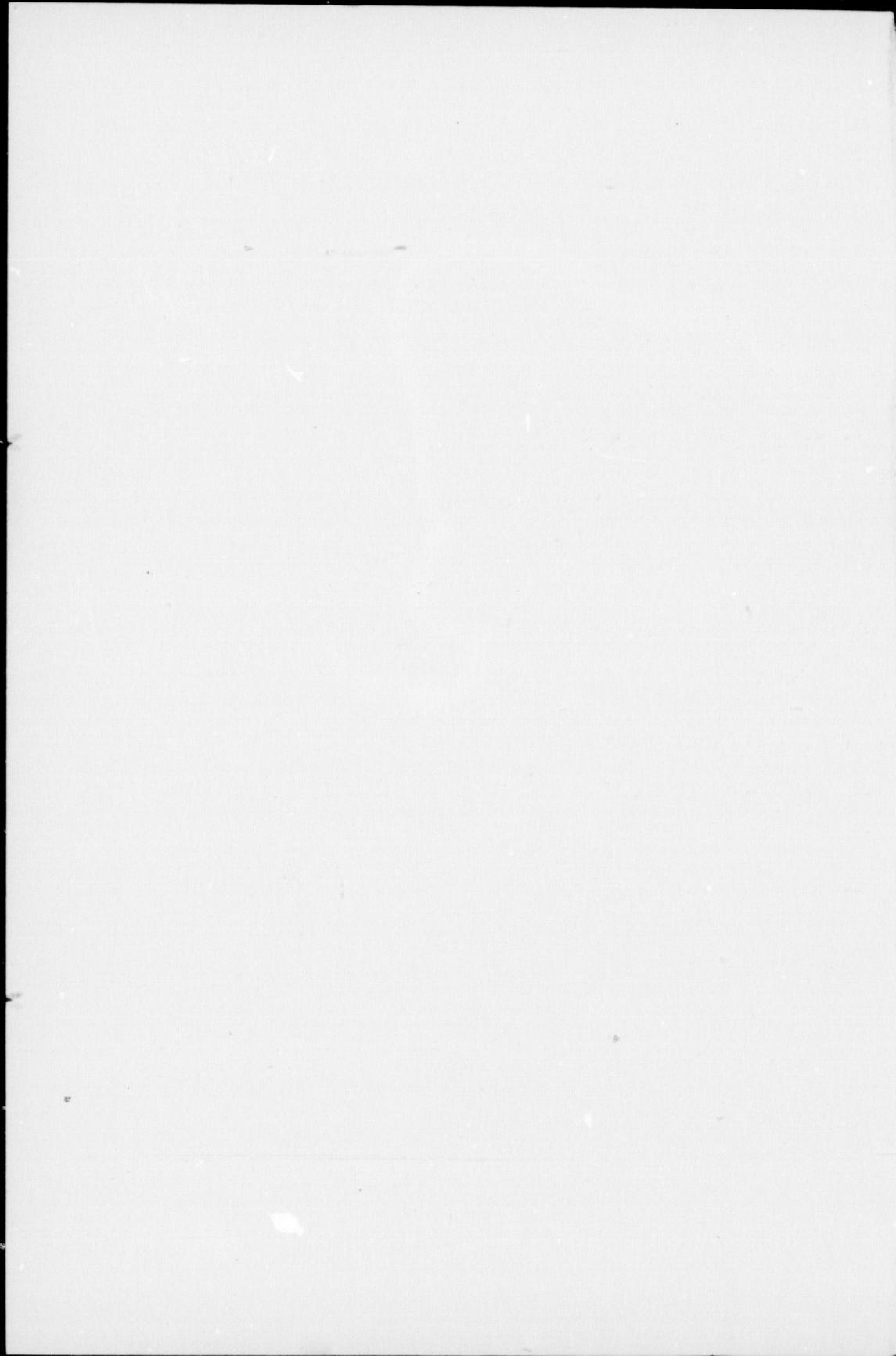
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Dale E. Meredith—for Commission—Cross

Cross Examination by Mr. Wiseman:

[71] Q. Now, did you ever sell a Symbra'ette brassiere or [72] girdle?

A. No.

Q. You never sold a single Symbra'ette brassiere or girdle?

A. Not except in recruiting. I sold inventory.

Q. I'll ask you that question, again. Have you, or your wife, ever sold a Symbra'ette product?

A. Yes, my wife sold some Symbra'ette products.

Q. Do you have any recollection as to how much it amounted to, dollarwise?

* * * * *

Cross Examination by Mr. Wiseman:

[81] Q. Mr. Meredith, did you ever go into the brassiere business yourself?

A. No, not really.

Q. Did you, on any occasion, ever form an organization to sell brassieres and girdles?

A. I started to, yes.

Q. Was this organization known as Bellavonne, Inc?

A. Yes.

Q. Did Bellavonne, Inc. ever sell any brassieres?

A. No.

Dale E. Meredith—for Commission—Cross

Q. Did you, on any occasion, ever mail to people your marketing program for Bellavonne, Inc.?

A. I mailed people a sample marketing program, which I was considering using.

Q. When did you use this, sir?

[82] A. I forget, it was back in '71, I think, sometime.

Mr. Wiseman: I'd like to have identified as Respondent's Exhibit 153, a document dated January 15, 1971, entitled Bellavonne, Inc.

(Respondent's Exhibit 153 was marked for identification.)

By Mr. Wiseman:

Q. I'll ask you, Mr. Meredith, is that your signature that appears on that document?

A. Yes. This was a suggested marketing program that was sent out.

Q. Now, did you form Bellavonne, Inc. after you left the Symbra'ette organization?

A. At the time I formed Bellavonne, we were not active in any manner with Symbra'ette.

Q. Now, as I understood your testimony earlier, you phased out of Symbra'ette in January of 1971. Isn't that correct?

A. Right.

Q. Then you had this document, RX 153, dated January 15, 1971.

A. Right.

Dale E. Meredith—for Commission—Cross

Q. So about the time you phased out of Symbra'ette you formed Bellavonne, Inc.

A. I mentally quit Symbra'ette in August of 1970.

[83] Q. I'd like you to answer my question, please.

A. Right.

Q. Now, would you describe to this Court the marketing program that you had employed in Belavonne, Inc.?

A. Well, we never employed a marketing program. We had a suggested marketing program. We couldn't get it approved by the state. It was considered unethical and illegal.

Q. But you did mail out that document I put in evidence.

A. Right.

Q. To how many people?

A. Oh, possibly, 20 or 30.

Q. For a fact, you even had a price list, did you not?

A. We had a suggested price list, yes.

Mr. Stone: Your Honor, we haven't any copies of these documents.

Mr. Wiseman: I'm sorry.

I'd like to have identified as Exhibit 154, the price list entitled Bellavonne, Bras, Girdles, and Swimwear.

Judge Hanseom: It will be so identified. I see you have marked it.

(Respondent's Exhibit 154 was marked for identification.)

Dale E. Meredith--for Commission--Cross

By Mr. Weisman:

[84] Q. Mr. Meredith, is this the price list that you had submitted to your customers? I hand the witness RX 154.

A. Yes.

Q. In your program, Mr. Meredith, is it not a fact you used the word "bunnies"?

A. Yes.

Q. What were "bunnies" in this program?

A. They were the level of a key, if I recall right.

Q. Did the bunnies recruit others?

A. That was the idea of the program.

Q. How about, did you have any keys in your program?

A. No, we had no keys. All I had was a bunch of papers, which you have there. And yes, on that paper there were keys.

Q. Was it intended that the keys would recruit others?

A. If we had started this company, yes, that was the idea.

Q. When did Bellavonne, Inc. go out of business, Mr. Meredith?

A. Bellavonne, Inc. never started in business, as far as bras and girdles are concerned or any part of the paper work that you're showing.

Q. Are you suggesting, sir, that you mailed out these various price lists and distributor agreements without having any products to sell?

Dale E. Meredith—for Commission—Cross

[85] A. We had some sample products that we had ordered.

Q. Did anybody purchase your products?

A. No, we sent some products to some people.

Q. You never sold any?

A. No.

Q. Did you have an inventory?

A. Small.

Q. How small of an inventory did you have?

A. I don't recall just how much to start with. They're still sitting in my basement.

Q. Was it under \$100?

A. Oh, no.

* * * * *

* * * * *

[88] Q. Mr. Meredith, about November 19, 1969, do you recall sending a letter to Mr. Simonsen to stop payment on checks?

A. Probably.

Mr. Wiseman: I'd like to have marked for identification RX 156.

Judge Hanscom: They are marked.

(Respondent's Exhibit 156 was marked for identification.)

By Mr. Wiseman:

Q. Mr. Meredith, I would like to have you look at this letter dated November 19, 1969, and ask you if that's your signature that appears on that letter?

Dale E. Meredith—for Commission—Cross

A. Yes.

Mr. Wiseman: Your Honor, I would like to have admitted into evidence all the exhibits thus far, 152 through 156.

Mr. Steiner: Your Honor, I'd like to know what the relevancy is, particularly of this last document.

Mr. Wiseman: Yes, I think it's going to show bias and prejudice in his testimony, when I get finished.

[89] Judge Hanscom: I have here RX 152, RX 153, RX 154, RX 155.

Mr. Wiseman: I have in front of me RX 156.

Judge Hanscom: RX 156, to which is attached two pieces of paper. I think you should mark those. Maybe you should mark the letter 156(a) and mark the other two items 156(b) and the small tape 156(c).

Do you wish that to go into the record, Mr. Wiseman?

Mr. Wiseman: Yes, I do.

Judge Hanscom: They will be received in evidence. They are received in evidence.

(Respondent's Exhibits 152, 153, 154, 155, 156, were received in evidence.)

By Mr. Wiseman:

Q. Isn't it a fact, Mr. Meredith, that at the time prior to your phasing out of Symbra'ette, that there were a series of checks sent to Symbra'ette that were not honored by the bank and marked "insufficient funds"?

A. Yes.

Q. In addition to the five mentioned in that letter, were there not nine other checks so treated?

Dale E. Meredith—for Commission—Cross

A. Very probably.

Q. Is it not a fact that during the period of January 1970 and September 1970, nine checks were returned to Symbra'ette because of insufficient funds?

[90] A. I don't recall the particular dates, or anything like that, no.

Q. Those numbers would be approximately right?

A. Approximately right, yes.

Q. Did any of this activity relate, in any way to your testimony today?

A. I'm not mad at Symbra'ette because I wrote bad checks, is that what you mean?

Q. Yes.

A. No.

Q. Did it have anything to do with your leaving the Symbra'ette program, these bad checks?

A. No. I covered any checks that they had, I think, and sent them money, and ordered inventory after that.

Q. Isn't it a fact they had to deduct the amounts of the bad checks from the profits you were to receive as a Symbra'ette distributor?

A. I believe not, because we never had any money coming from Symbra'ette in amounts that would have covered those checks. Maybe once or twice they deducted some, maybe for three of the checks. I remember one time sending a wire for \$624, that covered a lot of checks.

* * * * *

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Dale E. Meredith—for Commission—Cross

[91] Q. Mr. Meredith, are you personally employed today?

[92] A. Yes.

Q. By whom?

A. McCulloch Properties.

Q. McCulloch? Would you spell that, please?

A. M-e-C-u-l-l-o-c-h.

Q. What type of business are they involved in?

A. In land development.

Q. Is that Havasu Land Development?

A. For one, yes.

Q. Do they deal in recreation land sales?

A. That and residential land sales.

Q. Residential land sales?

A. Yes.

Q. Is it a well-publicized, well-advertised program?

A. Yes.

Q. All these programs are in the nature of the Havasu program?

A. Yes.

Q. How long have you been with McCulloch?

A. Nearly two years.

Q. Prior to that time, were you employed?

A. Oh, somewhat.

Q. What was the nature of that employment?

A. Well, I worked in a furniture store for about five months.

Dale E. Meredith—for Commission—Cross

[93] Q. Do you recall the name of the furniture store?

A. Justice.

Q. Justice Furniture Store. Could you describe the type of operation to us?

A. Well, he sold furniture.

Q. Second-hand furniture?

A. New Furniture.

Q. New furniture. Was it a type of discount house?

A. No. They had retail prices—advertised retail prices.

Q. What was the nature of your job with Justice?

A. I worked on the floor.

Q. What do you mean by "worked on the floor"?

A. Well, when people came in to buy furniture, I took care of them.

Q. Sold furniture?

A. Right.

Q. That lasted about five months?

A. It lasted as long as I wanted it to last, about five months.

Q. When did you start to work for Justice, what was the month and year?

A. I guess it was in the summer of 71. I don't know.

Q. Summer of 1971. Now, prior to working for Justice, were you employed?

[94] A. I sold sweepers for about two months.

Q. You sold sweepers for two months?

A. Uh-huh.

Dale E. Meredith—for Commission—Cross

Q. What do you mean by "sweepers"?

A. Electrolux Sweeper.

Q. Electrolux. What was the name of the company you had worked for?

A. Electrolux.

Q. Do they have a marketing program like house-to-house type marketing program?

A. No. They had a retail sales price. And of course, we had a local office. They have local offices in each town.

Q. Is it like direct sales? . . . that type of selling.

A. It is direct sales.

Q. It is direct sales. You were the one who contacted the ultimate consumer?

A. Right.

Q. To whom did you report to? How would you classify the person you reported to?

A. As a manager hired and paid by Electrolux.

Q. By Electrolux. OK. How long were you with Electrolux?

A. Oh, about two months.

Q. Prior to that time, were you employed?

A. I was mixed up with Symbra'ette.

[95] Q. You were mixed up with Symbra'ette. That takes you to about 1971. You started with Symbra'ette about 1969/68?

A. '68.

Q. 1968. Now, prior to 1968, were you employed?

A. Yes.

Dale E. Meredith—for Commission—Cross

Q. Prior to your connection with Symbra'ette, were you employed?

A. Yes.

Q. In what capacity?

A. I was a regional manager for a company.

Q. Would you name the company?

A. It was called C. D. Stampley Enterprises from Charlotte, North Carolina.

Q. What did they do?

A. They were book sales, bible sales, religious material.

Q. What type of products were sold?

A. My particular end of it, I sold Catholic material—Catholic study material and bibles into the home.

Q. Was that kind of direct sales again?

A. That was—It was direct sales.

Q. OK. At the time you went to work for C.D.C., what was the year and month that you went to work for C.D.C.?

A. You mean C. D. Stampley?

Q. Yes.

[96] A. I worked for them off and on for about 20 years.

* * * * *

John F. Sanford—for Respondent—Direct

Direct Examination by Mr. Wiseman:

[135] Q. Now, would you describe for the Court what went on [136] within the first several weeks after you became a distributor of Symbra'ette products?

A. Yes. It's very easy to describe, because I haven't forgotten it. It shocked me. She had the lady who lived behind us get a group of ladies together. She went over and fitted them, showed them the product. And in less than a month's time, we had reordered over \$2,000 worth of merchandise that was sold right there in that end of Huntsville, Alabama, locally, to ladies.

Judge Hanscom: What was the amount?

The Witness: Approximately, \$2,000.

By Mr. Wiseman:

Q. What type of sales are you talking about, in connection with the \$2,000?

A. To the ultimate consumer.

Q. Pardon?

A. To the ultimate consumer.

* * * * *

* * * * *

[140] Q. Now, what do you discuss with distributors that you contemplate sponsoring for the Symbra'ette program?

A. We emphasize to these people that Symbra'ette is a retail business. We try to teach them how to retail this

John F. Sanford—for Respondent—Direct

merchandise; because if they don't retail merchandise, then we don't have a good program.

Q. Do you take everybody that comes along?

A. No, sir.

Q. How do you judge who to take and who not to take?

A. Well, we just—Of course, we talk with the people. We kind of form an opinion of whether we think they would be good people to work with and present the Symbra'ette products. Then we look, secondly, can this person afford to invest \$89 to \$150 in merchandise; can they afford to go into business for themselves? And if we think they can't, we tell them we think they can't.

[141] Q. Now, I think, what you just discussed might be called a screening process. Is that a correct term?

A. We try to screen our people.

Q. How long have you been practicing this screening process?

A. Since we began. Since we started.

Q. 1968?

A. Right.

* * * * *

* * * * *

Q. Now, what else do you take into consideration when [142] you sponsor a distributor?

A. We take into consideration whether this person—whether we think that this person would give the cus-

John F. Sanford—for Respondent—Direct

tomer the service that's required to fit this product, to see that the customer is wearing the bra properly or the swim top, and that she is getting the service that she's paying for.

Q. Let's take the everyday event or the most-common event. What, generally, does a sponsored distributor purchase by way of his initial order? . . . what amount, that is.

A. They will purchase approximately \$150.

Q. That will, again, be the wholesale-purchase price?

A. Right.

Q. Do you sell to any organization, other than a distributor?

A. We sell to any other organization and to all.

Q. Do you have any form of outlet of sale of the product, the Symbra'ette product, other than to distributors?

A. No. We have—We do not, except in the instance that we have a number of boutiques, who are distributors. We have a number of boutiques and beauty shops, who handle our products, as well as the everyday housewife.

Q. I see. These boutiques, you consider them to be distributors?

A. Yes.

Q. What is a boutique, just for the record?

[143] A. A specialty shop, ladies clothing, cosmetics, lingerie.

Q. How many such boutique shops do you deal with?

John F. Sanford—for Respondent—Direct

A. We directly deal with six, ourselves.

Q. As I understand your testimony, a boutique is a retail store where they sell other products, other than Symbra'ette products?

A. Oh, yes.

Q. You previously talked about distributors being taught how to fit the Symbra'ette products properly. Could you describe to the Court what goes on in connection with boutique shops, as relates to the fitting of ultimate consumers?

A. They are taught the identical process of fitting these garments, because suspension-type bras must be fitted properly, to give the results that they buy.

Q. How much time is spent teaching people how to fit the products properly?

A. They will—A person will work with a girl for at least three showings. Now, by showings, we mean parties, such as on the party plan, where a lady gets a group of people together to come to her home. They go in and they teach this girl to fit before she goes, individually. Then they go in and work with her. And first the sponsor does the fitting. Then she brings the new girl into the fitting, gets her started, checks her then, and sees that she's doing it properly. Then [144] she will let her go out on her own and try a couple. And then, she'll go back with her, to be sure that she's doing all right.

Q. What period of time expires before all of this is completed, generally?

John F. Sanford—for Respondent—Direct

A. Generally, it could be three weeks.

Q. Does a distributor perform any services or do anything for a sponsor/distributor, under the Symbra'ette program?

A. Would you repeat the question, please?

Q. Yes. When a distributor sponsors another distributor, what, if anything, does the sponsoring distributor do for the distributor he had sponsored?

A. The sponsoring distributor has the responsibility to see that the new distributor is knowledgeable in the product, the fitting of the product, and how to make retail sales. These are the responsibilities of the sponsoring distributor to the new distributor.

Q. More specifically, what are some of the activities that are carried out toward that end?

A. Teaching her how to fit; taking her out and showing her how to find retail customers; going with her to these people; helping her with parties or showings, whichever you prefer to call them, coffee clutches, whatever name you prefer; checking her fittings; and being sure she knows what she's doing; and helping her fill out orders, till she learns how.

Q. Is this a rare practice or a common practice, to do [145] all these things?

A. It's a general practice.

Q. It is a general practice?

A. It is a general practice.

John F. Sanford—for Respondent—Direct

Q. If I would ask you for your best recollection as to what percentage of the time this takes place, are you in a position to so testify?

A. What percentage of the time that it takes place?

Q. Yes.

A. My best guess—And I'm just guessing. My guess would be 97 percent. Because, quite frankly, I don't know, in our group, anyone who hasn't had that.

Q. Had all these things taken place?

A. Had all these things.

* * * * *

* * * * *

[146] Q. Why would you refer to this type of program as a direct-selling program?

A. Because you are selling directly to the customer. You are going to the customer, rather than the customer coming to you.

Q. And that entails what?

A. That entails, first, finding your customer; second, getting in your car and driving across town to the customer's house; going in and taking in your suitcases of bras and girdles; arriving at her correct size; seeing it's adjusted properly and she knows how to put the garment on; the proper care of the garment; how to wear it; and the fact that Symbra'ette has a replaceable back, which she can buy, in case the back gives.

John F. Sanford—for Respondent—Direct

Q. Does the ultimate consumer get to know her distributor well?

A. Oh, yes, because I would say that—This, again, is my best judgment. ——90 percent of all first sales result in future sales. And the consultant or distributor has a brochure with her name on it, that she leaves with the customer, with her name, telephone, and address, so that she can get in touch with her, if she has any problems. And the distributors are encouraged to get in touch with each person that they sell [147] a garment with not later than seven days after the sale.

Q. Would I be correct if I said that the sale to the ultimate consumer of Symbra'ette products requires service?

A. Oh, yes.

Q. Would I be further correct in saying that service is an important part of this distribution method?

A. Very important part.

Q. From your experience as a Symbra'ette distributor, is an effort made to sell Symbra'ette products to the ultimate consumers?

A. Yes. That's the primary purpose.

Q. Is it an essential part of the program?

A. Absolutely.

* * * * *

John F. Sanford—for Respondent—Cross

Cross Examination by Mr. Stone:

[162] A. My function, in the beginning was to help her to fill out orders, to order merchandise, because, quite frankly, she was too busy selling retail to fill out the orders. And I am sure that you have a copy of the order form in there, and it's quite detailed. And if she took all the time to fill out the order and check it and double check it, she wouldn't have time to be making the sales. So I was assisting her with that.

* * * * *

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[163] Q. When did you first learn how it operates?

A. I would say, probably, I really took the time to read the book and get into it and really learn, oh, I'd say, within a month after she started I really learned. I read the book in the beginning, but I didn't—I wasn't particularly interested in it, till I saw the money that she was making. And then, I got interested. So I would say within a month I read it and learned what it was all about.

Q. What level is your wife at now?

A. Regional director.

Q. Was she at any other level before that, that you know of?

A. Yes. She came up—She was a district manager. She was a supervisor. And on up the line.

Q. Which one first? . . . supervisor?

A. Supervisor.

John F. Sanford—for Respondent—Cross

Q. Supervisor then district manager?

A. Yes.

[164] Q. Approximately what time was she a supervisor?

A. She was a supervisor until the middle of March. She passed the requirements to make district manager the first week in March. I do remember that, because I had begun to get interested in the business. So effective the 1st of April, 1968, she became a district manager. Now, I remember that part.

Q. What time? I'm sorry.

A. April the 1st.

Q. 1968?

A. Yes.

Q. So between February and April, she became a district manager, you say?

A. Yes. That's what the name was then.

Q. Would it be fair to say that she came in as a supervisor then?

Mr. Wiseman: I'm going to——

The Witness: I don't know.

By Mr. Stone:

Q. What is a supervisor? Can you describe the term "supervisor" as you understand it?

A. The term "supervisor" as I understand it, is a person who—Are we talking about the general word "super-

John F. Sanford—for Respondent—Cross

visor" or the word "supervisor" as relates to the Symbra'ette marketing program then?

[165] Q. The Symbra'ette marketing program.

A. The term "supervisor" to me, means a person who has the capability to train and assist other people. That is my conception of a supervisor.

Q. What is the supervisor entitled to?

A. What is the supervisor entitled? We don't have that any more. But the supervisor was entitled to—if my memory is right, she was entitled to, either 45 or 50 percent discount on her purchases. And she was entitled to a five-percent override on the gross volume of people that she brought in and trained.

Q. Was she entitled to any other overrides?

A. I can't honestly remember that.

Q. As a regional direct or regional manager, which I believe she is now. Is that correct?

A. She's called a regional director now.

Q. Regional director. What is a regional director entitled to?

A. Regional director is entitled to a basic discount of 35 percent, a discount further of 20 percent for having attained the level of district manager, and an additional five percent on all her retail—all her purchases for retail sales, after she has passed \$500 purchased from the company. This five percent is applicable to every dollar purchase, which entitles her to 60 percent on her retail sales. She's [166] entitled to overrides on the people that she brings into the business and trains.

John F. Sanford—for Respondent—Cross

Q. Is she entitled, as a supervisor, as a regional director, or district manager, to sponsor other people to come into the

A. Yes, certainly.

Q. What if she sponsors somebody, does she get anything for this?

A. Does she get anything for this?

Q. Yes.

A. Would you be more explicit?

Q. If the person she sponsors sells products, does she receive—

A. If she sells products, yes.

Q. What does she receive?

A. She receives an override for training and helping that person get started.

Q. Can you describe your wife's—Does she have a number of people that she sponsors? I believe you said you had 60?

A. Approximately 60.

Q. Can you tell me how they're organized?

A. They're organized from—We have five district directors.

Q. That are directly under her?

[167] A. Yes.

Q. Did your wife sponsor those five?

A. Yes. Then we have some people on the senior-consultant level that she directly sponsors. Then we have

John F. Sanford—for Respondent—Cross

some people on the consultant level that she directly sponsors.

Q. So we've got your wife as a regional manager. Is that correct?

A. Right.

Q. And she's got five district managers.

A. Uh-huh.

Q. And how many—

A. I couldn't give you an accurate count of how many senior consultants or how many consultants.

Q. And she directly sponsored each and every one of these people?

A. She has sponsored the majority of those people that are directly under her at this time. The ones that she didn't sponsor directly, were sponsored by someone else. As we said in the beginning, we do have dropouts, who have subsequently dropped out, and these people merely close the ranks.

Q. When your wife directly sponsored these five district managers, could they, in turn, sponsor other people? Did they have the right to sponsor other people?

A. Anybody in this Symbra'ette organization has the [168] right to sponsor other people. This is not something that's restricted to one level. Anybody has a right to sponsor other people. The restriction is that they must be able to train these people. That's the only restriction on it, is that they must train these people.

Q. I see. So each one of the five district managers are district managers that your wife sponsored. Could and

John F. Sanford—for Respondent—Cross

did—Did they sponsor other people? . . . the district managers?

A. Yes.

Q. How about the senior consultants?

A. Yes. Some of the senior consultants do, some don't.

Q. Have some of the senior—Do they have the right to sponsor other people?

A. They do have the right.

Q. How about the consultants?

A. They have the right.

Q. Do the—A consultant or say a senior consultant that was sponsored by your wife or sponsored by one of your wife's district managers, do they become part of your wife's organization?

A. I'm sorry. Do they become part of the organization? In the sense that any other group. And I don't speak just for direct sales. We, as regionals, have a responsibility to a group of people, to help them and assist them in their business. They have, in turn, down the line, the same [169] responsibility to their people to teach them and help them in their sales. And as a result of this, yes, we naturally earn an override from these people.

Q. So a consultant not directly sponsored by your wife joins the Symbra'ette marketing program, your wife receives overrides for any retail sales that that consultant makes. Is that a fair statement?

A. An override that that consultant makes? Only through the district or senior consultant, who is between

John F. Sanford—for Respondent—Cross

—or the person who is between, because each person gets an override on the gross volume of—that that person has, on down the line.

Q. Would it be fair to say that anybody joining the Symbra'ette marketing program, as you understand it, as a consultant, senior consultant, district manager, has the right to sponsor other people?

A. Certainly, they have the right to sponsor other people.

Q. You, of course, have indicated before you have about 60, I guess, members.

A. Approximately 60. I haven't counted them, to be sure. Because—Let me answer your question this way: All of our distributors—approximately 95 percent of our distributors are housewives or working girls that do this on a part-time basis. They do not order each and every month, not all of them. [170] Some of them do, some of them don't.

Now, we have some that may order two orders this month and it may be three months before they order again.

So that way, I don't keep an accurate count. I do know who most of these people are, because they've been with us for a number of years.

Q. Were any of those 60 directly sponsored by your wife?

A. Certainly.

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John F. Sanford—for Respondent—Cross

[171] The Witness: I take the Symbra'ette marketing program, and I show what this person can purchase, merchandise, from the companies, the various discounts. I show them, on an order form, what this means, in terms of dollars and cents, on each item or each group of items that they could sell; what dollar profit they can make on that. This is what I go through, first. And this is where we place our emphasis, is on retail sales.

Now, granted, we're not stupid enough not to show them that there is extra profit in bringing other people in and teaching them, because it's there. It's part of the marketing program. And I'm going to show them the whole marketing program, not just a part of it. I want them to see it all.

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[173] Q. How do you—What's—You mentioned in your direct testimony that you hold parties, I guess. Is that the term you used?

A. Uh-huh.

Q. Can you describe the party?

A. Well, not being a fitter, unfortunately, I can't describe the actual mechanics of the party. I can tell you, basically, what happens.

Some lady decides that she would like to earn a free bra. Now there is a provision in Symbra'ette structure, whereby a lady can earn a free bra by having a group of

John F. Sanford—for Respondent—Cross

people into her house and if enough sales are made; she will earn a bra, two bras, or even a swimsuit, if enough retail sales are made there. And she will decide that she wants to have a party, and she will invite a group of her friends or relatives or mere acquaintances. And the Symbra'ette consultant will come in and she will demonstrate the products. And then, she will fit each one individually and attempt to make a retail sale. [174] Now, she doesn't sell every one of them, but she sells a considerable percentage of them. And that is a party.

Q. How many parties does your wife have, say, in the course of a month?

A. In the course of a month. Well, as I said previously, my wife has a very bad back problem. And this past month she has worked—Well, this month, in June, she has worked either three or four, already. But there may be months that she's not physically able, because fitting these garments requires stooping and bending. And with her back in the condition it's in, she cannot always do that. But when she can, she does. But she does go with these girls who book these parties, when they are learning. She goes out and helps them. She books parties for them. And she helps them to learn how to do this business.

Q. Are you finished now?

A. Yes.

Q. On a good year, when your wife's back hasn't been bothering her, about how many parties would she

John F. Sanford—for Respondent—Cross

A. I couldn't answer the question, but I could tell you that she would do probably between eight/seventy-five hundred and twelve thousand dollars for herself, sales.

Q. How many parties is this?

A. I have no idea, because the parties will run from \$100 to \$300 gross receipts. And I couldn't tell you how many parties.

[175] Q. In a good year, she makes \$12,000?

A. She can make \$10/\$12,000 in a good year. This is not an average year, but, I mean, if she were physically able, yes, she could make \$12,000 every year, in sales.

Q. This is, what, gross sales, profit or what?

A. Gross sales.

* * * * *

[178] Q. Fine. Getting back to the parties, again, I think we will all agree that or there is no dispute of the quality of the product, and if somebody was attending the party—that's the term, I guess, correct term—was interested in or asked you or your wife—I guess, your wife, what the circumstances were about the Symbra'ette marketing program, about joining it, would your wife explain the program to them?

A. Not right then, no, because she's in the process of conducting what I would term a business transaction with this [179] person and other people. So she will make an

*John F. Sanford—for Respondent—Cross
John F. Sanford—for Respondent—Redirect*

appointment, after this party, if the person wants. Or she will make an appointment to come to the person's home or they can come to our home. But she will not stop right in the middle of a sale—a retail sale to discuss marketing with anyone.

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[219] Q. You also mentioned in the cross-examination that you have used the Symbra'ette sales manual. Is that correct?

A. Yes.

Q. Is any part of the Symbra'ette sales manual devoted to the product itself?

A. I would say two-thirds of it.

Q. Two-thirds of it is devoted to the product itself?

A. I would say two-thirds is devoted to the product itself.

Q. So being devoted to the product itself, what would it include?

A. It would include instructions on fitting; instructions on how to obtain retail sales; instructions on how to carry out these parties or showings, as they are sometimes called. Basically, it's instructions on how to retail the product and how to get more retail sales repeat business.

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*John F. Sanford—for Respondent—Recross
Dirk Wassenaar—for Respondent—Direct*

[223] Q. I think you testified to an assumption to Respondent's Counsel that when you get from the highest level, regional manager, to the lowest level, key, the ratio of—I'm not sure—sales increased? The profit derived from the program became greater from retail sales? Is that it?

A. Let me explain it to you in real simple words. The consultant, by virtue of her purchase power of 35 percent plus a five percent for her \$500 bonus, which gives her a 40-percent purchase discount, this is what she can make on her retail sales. Now, the most that she can make on people that she sponsors is three percent. So at that level, it follows by all rules of Newton and everybody else, that she derives the majority of her income from her own personal sales.

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Direct Examination by Mr. Wiseman:

[240] Q. Is there any feature of the merchandising program described in Paragraphs 7 and 8 of the Stipulation of Facts that distinguishes the merchandising program of Symbra'ette from the merchandising technique used by department stores and the like, so far as the ultimate consumer is concerned?

A. Yes. I would say the program of direct selling where the person selling the merchandise is going to the

Dirk Wassenaar—for Respondent—Direct

customer rather than the customer having to come to the place of sale, like a retail store, tends to be much more service oriented. A person-to-person relationship will be built up between the saleslady and the customer; a certain amount of trust will be developed; a certain follow-up activity will take place, which will, many times, help to get the better service from the product or take care of complaints in a better way. So I would generally characterize this as a much more service [241] orientation than you will find in an average retail store.

Q. Is it fair to say from your testimony then that what is unique about the direct sales merchandising program is that it couples the product with a sales oriented/service oriented environment? Is that correct?

A. Yes. It's certainly correct. And I think it's very important to realize from a marketing prospective, particularly, that one always sells more than just the physical product by itself. It's not just the physical product, it's the ultimate consumer satisfaction that one sells, which includes a lot of intangibles: one of them being the proper fit, the proper instructions for caring for the product, proper service in case they are defective, et cetera.

Q. Based on the evidence you heard previously on this matter and also from your reading of the Stipulation of Facts that were previously discussed, what significance, if any, do you apply to the matter of service of the ultimate consumer as it relates to the Symbra'ette marketing program?

Dirk Wassenaar—for Respondent—Direct

A. I don't know what you're driving at, specifically, Mr. Wiseman.

But as I indicated before, service is a very vital important part of the product. And it is one of the features that a program of this type tends to have over any program, where the customer has to go to the store, fit herself without [242] any help or have to rely on unqualified help or new girls.

I don't know whether that was what you were driving at.

Q. Probably what I am getting is this: If the Symbra'ette program is to succeed as you understand the Symbra'ette program to be, are there two elements involved? . . . For example, one being the product and the other being service to the ultimate consumer.

A. Yes. And if it is to succeed, like any marketing organization, you will have to create a satisfied customer. You have to satisfy people to the extent that they will come back for more, and they will suggest others to try the product. You have to create a satisfied customer.

Q. And that service, is it correct to say, is not as much present in the retail outlets, such as: Department stores and others?

A. Certainly not. No. In most retail establishments today, the trend is more towards self-service, standard sizes. You, at best, can fit yourself. But there tends to be a lack of qualified help to help you in fitting or taking care of problems, yes.

Dirk Wassenaar—for Respondent—Direct

Dirk Wassenaar—for Respondent—Cross

Q. Now, with respect to the ultimate consumer, Dr. Wassenaar, is the ultimate consumer capable of obtaining as much value for the goods and services he receives through multi-level selling programs of bona fide products, as he [243] is through a sale through the more common merchandising program?

A. Again, this is a subjective issue, because value is subjective. However, the fact that many people seem to specifically desire to repurchase this product proves that a certain number of customers very definitely feel that they get superior value in this product . . . not identical but superior.

Q. Now, in marketing theory—marketing philosophy, is it correct to say that multi-level merchandising programs are the same as retail outlet merchandising programs, except one includes the services of direct sales to ultimate consumers and the other does not?

A. Yes. I would rate that as a correct statement, yes.

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Cross Examination by Mr. Steiner:

[261] a good job for them, and they will train them in return. So the Symbra'ette program, I would say, is more aggressive and it's quicker in being built up and being established.

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Dirk Wassenaar—for Respondent—Cross

[262] I might throw something in, something that is overlooked fairly consistent here, and that is that these overrides are being looked upon by the uninformed, I think, in the same light as a dividend check that you get in the mail automatically each month. I think that's an unfair way of looking at it. I think that if you get involved in an organization of this type, you will find that these monies are pretty hard earned, as was brought out yesterday. If you bring in a new individual, you are responsible for the training and the supervision and the motivation of this individual. Now, I think if you would study this, you would see, if I would just sign up a person without giving him any training or any motivation, just hope he would sell a million dollars worth of merchandise and I would get the override. I think you would find consistently, almost without any exception, that these persons would not sell a single cent, because you need training in order to develop a person and you need consistent motivation.

It was brought out yesterday that certain individuals [263] who leave the organization later come back. Why would they? Partly because they were getting the support they hadn't gotten before.

I want the record to show that these overrides are not gravy train. These are pretty hard earned for their money.

Q. What is the basis for the motivation that you were speaking about?

Dirk Wassenaar—for Respondent—Cross

A. Ultimate motivation for people involved in the organization, being in business for themselves, the profits. It's just simple money. But it takes more than just hanging a few dollars in front of someone and sending them out into the world. It takes encouragement. It takes teaching them the skill, both of the product and finding prospects and making sales. That is something that most people cannot do successfully. And even those that can do it successfully, do need supervision and encouragement.

You find many of these organizations putting up newsletters, having meetings, having get-togethers, all kinds of ways, which you also find in the traditional sales organization, to keep the morale high, to keep them charged up, because it sometimes gets a little depressing.

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of San Francisco; I am over the age of eighteen years and not a party to the within action; my business address is: 562 Mission Street, San Francisco, California.

On May 8, 1975, I served the within Supplemental Joint Appendix, "Ger-Ro-Mar, Inc. vs. Federal Trade Commission", in the United States Court of Appeals for the Second Circuit, No. 74-2343;

on the attorneys in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at San Francisco, California, addressed as follows:

Mr. Gerald Harwood, General Counsel
Mr. W. Baldwin Ogden, Asst. General Counsel
Federal Trade Commission
Sixth & Pennsylvania Avenues, N.W.
Washington, D.C. 20580

Hogan & Hartson
815 Connecticut Avenue, N.W.
Washington, D.C. 20006 (1 copy)

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on May 8, 1975, at San Francisco, California.

M. J. O'malley

